IN THE

Supreme Court of the United States

OCTOBER TERM, 1942

Nos. 387–388

RECONSTRUCTION FINANCE CORPORATION,
Petitioner,

v.

BANKERS TRUST COMPANY,
Trustee.

BRIEF OF *AMICUS CURIAE*

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Dated: December 19, 1942.

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Statement

This brief is filed in the interest of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, and The Denver and Rio Grande Western Railroad Company, for each of which the undersigned or the firm of which he is a member appears as one of the attorneys or counsel for the Debtor.

As already has been pointed out in the briefs filed in this Court on behalf of these companies in the two cases argued in this Court on October 13-15, 1942, it is the debtor, as distinguished from its trustees, creditors and stockholders, which is expressly charged with the responsibility of filing

and carrying through a Plan of Reorganization under Section 77 of the National Bankruptcy Act.

Referring to this responsibility in its more practical aspects, Judge PHILLIPS, speaking for the United States Circuit Court of Appeals for the Tenth Circuit in *The Denver and Rio Grande Western Railroad Company* v. *Wilson McCarthy and Henry Swan, Trustees* (111 F. (2d) 820) said:

> "Undoubtedly, the debtor has important duties to perform in the reorganization proceedings, *Continental Illinois National Bank & Trust Co.* v. *Chicago, Rock Island & Pacific Railway*, 4 U. S. 648, 679, 55 S. Ct. 595, 79 L. Ed. 1110, and is entitled to the services of competent counsel to aid it in the performance of those duties and to have reasonable allowances made for the expenses incurred and the services rendered by such counsel, not only in connection with the formulation and presentation of the plan of the debtor but also in connection with the proceeding, the debtor having the right to be heard on all questions arising therein" (p. 823).

This brief will be directed generally to the proposition (which we understand is one of the major contentions of Bankers Trust Company, respondent, in the present case) that Paragraph 12 of Subsection (c) of Section 77 of the National Bankruptcy Act authorizing the Interstate Commerce Commission to prescribe maximum limits of expenses and compensation of the parties embraced therein was intended to apply only to those who participate in the proceeding as volunteers and should not be held applicable to a mortgage trustee having a paramount lien upon the trust estate assuring it just compensation, or to a debtor charged with the responsibilities summarized in the Opinion of Circuit Judge PHILLIPS in the case cited above. While the status of the debtor is not directly involved in the

present proceeding as presented on writs of certiorari issued to review a decision of the Circuit Court of Appeals in the Eighth Circuit affecting only the trustee under an indenture, a decision on the broad ground already stated would apply equally to the debtor; and it is assumed moreover that this Court may deem it appropriate to clarify Paragraph 12 to the extent that its true application is left in doubt by decisions already rendered by District Courts and various Circuit Courts of Appeal.

ARGUMENT

Paragraph 12 of Subsection (c) of Section 77 of the National Bankruptcy Act does not embrace or apply to the debtor either by its express terms or by Congressional intent but is limited in its application to parties in interest who seek recourse to the trust estate as a matter of grace and not as a matter of right.

In order that we may determine the correct application of Paragraph 12 of Subsection (c) of Section 77 of the National Bankruptcy Act in particular relation to parties such as the trustee of an indenture and the debtor itself who seeks recourse to the trust estate not as a matter of grace but as a matter of right, it will be helpful, we believe, first to trace this Paragraph to its source and then to analyze its provisions in the form in which it now appears.

In its earliest form this statute, being Clause 8 of Subsection (c) of the original Section 77 of the National Bankruptcy Act, as inserted by the Act of Congress approved March 3, 1933, read as follows:

> "Upon approving the petition as properly filed the judge * * * (8) may, within such maximum limits

as are fixed by the Commission, as elsewhere provided in subdivision (f) of this section, allow reasonable compensation for services rendered and reimbursement for actual and necessary expenses incurred in connection with the proceeding and plan by officers, parties in interest, reorganization managers, and committees or other representatives of creditors or stockholders and the attorneys or agents of any of the foregoing, and by such assistants as the Commission with the approval of the judge may specially employ."

Subdivision (f) here referred to further provides:

"The Commission shall also, after hearing if necessary, fix maximum compensation and reimbursement which may be allowed by the Court pursuant to Clause (8) of Subdivision (c) of this Section: Provided, That unless good and sufficient reasons appear therefor no allowance for fees or compensation shall be made to officers of corporations who have acted as managers or in any capacity in connection with the reorganization when such corporation had an interest in the matter."

It is to be noted that Clause (8) does not mention either (a) the trustee under an indenture, or (b) the debtor, and does not definitely specify any person or corporation that would be an indispensable party to a proceeding in equity. *Quite clearly the debtor itself was not within the scope of this paragraph because under the statute in its then form the debtor was left in possession of its entire estate, the appointment of a trustee or trustees not being mandatory until the adoption of the amendatory Section 77, approved August 27, 1935.*

At all times during the life of the original Section 77 and in the early days of the amendatory Section 77, the practice was uniform among the carriers that had sought

relief under its provisions for the trustee or trustees, where one or more had been appointed, or the debtor itself where there was no trustee in the proceeding, to provide *currently* out of its trust estate (sometimes with, sometimes without, a special order of Court) *all* of the debtor's expenses (including compensation of its counsel) as the responsible moving party under the Section. These payments were shown in the monthly or periodic reports of disbursements and the practice was thoroughly understood in the summer of 1935, when Congress, acting very largely upon the recommendation of the Federal Coordinator of Railroads, himself a member of the Interstate Commerce Commission, radically revised Section 77. Certain changes were made in Clause (8) of Subsection (c), which as amended was carried into the new law as Paragraph 12 of Subsection (c) in the following language:

> "(12) Within such maximum limits as are fixed by the Commission, the judge may make an allowance, to be paid out of the debtor's estate, for the actual and reasonable expenses (including reasonable attorney's fees) incurred in connection with the proceeding and plan by parties in interest, and by reorganization managers and committees or other representatives of creditors and stockholders, and within such limits may make an allowance to be paid out of the debtor's estate for the actual and reasonable expenses incurred in connection with the proceedings and plan and reasonable compensation for services in connection therewith by trustees under indentures, depositaries and such assistants as the Commission with the approval of the judge may especially employ. Appeals from orders of the court fixing such allowances may be taken to the circuit court of appeals independently of other appeals in the proceeding and shall be heard summarily. The Commission shall, at such time or times as it may

deem appropriate, after hearing, fix the maximum allowances which may be allowed by the court pursuant to the provisions of paragraph (12) of this subsection (c) and, after hearing if the Commission shall deem it necessary, the maximum compensation which may be allowed by the court pursuant to the provisions of paragraph (2) of this subsection (c)."

It will be noted that the new Paragraph 12 includes a specific reference to "trustees under indentures."

The reason for this specific reference to "trustees under indentures" is not disclosed in the history of the legislation. As already mentioned the amendatory Section 77 approved August 27, 1935, was the outcome of recommendations made to Congress by the Federal Coordinator of Railroads. Accompanying these recommendations was a complete Bill which was introduced in the Senate as S-1634 by Senator Wheeler (by request) on February 4, 1935. Paragraph 12 of Subsection (c) of this Bill was substantially the same as Clause (8) of Subdivision (c) of the original Section 77 except that "depositaries" are here for the first time specifically mentioned. Afterwards, this Bill was radically revised by the Coordinator and in its revised form was introduced in the House of Representatives on February 27, 1935, as H. R. 6249, by Chairman Sumners of the Judiciary Committee.

Paragraph 12 of Subsection (c) reappeared, however, in the same form as in S-1634.

On April 12, 1935, the Judiciary Committee circulated a revised print of H. R. 6249 which reflected many new changes proposed by the Coordinator. In this print, which is set out in full at pages 1-13 of the published record of the Hearing before the Committee on Judiciary, House of Representatives, Seventy-fourth Congress, on H. R. 6249,

Paragraph 12 of Subsection (c) for the first time brings in "trustees under indentures." Why this was done has not been made clear but it would be a harsh interpretation to say that Congress thereby intended for all purposes of Section 77 to destroy existing liens which such trustees might have upon specific property as security for their just compensation. The more reasonable construction would be that this language was inserted by the Coordinator (probably at the suggestion of trustee interests) to give such indenture trustees as had no lien on specific property or had a lien upon specific property which was without present value the right to receive their compensation out of the debtor's general estate subject to the conditions and limitations imposed with respect to other parties seeking recourse to the debtor's general estate as a matter of grace and not as a matter of right.

Congress did not, however, attempt to expand Paragraph 12 so as to bring the debtor itself within its scope, although the Coordinator did insert in the Committee print of H. R. 6249 the following provision:

> "While the debtor is in possession its officers and counsel shall be entitled to receive only such compensation as the judge, within such maximum limits as the Commission shall approve as reasonable, shall from time to time approve and no person shall be appointed or elected to any such office, to fill a vacancy or otherwise, without the prior approval of the judge."

This provision was rejected by the House Judiciary Committee and eliminated from the Bill as finally reported to and passed by the House of Representatives.

Accordingly, under an established rule of statutory construction, the practice of providing currently out of the

debtor's trust estate all of the debtor's expenses as the moving party under Section 77 which had prevailed from the beginning was validated even if originally invalid, which we respectfully submit it was *not*. In *Case* v. *Los Angeles Lumber Company* (308 U. S. 106), Mr. Justice DOUGLAS, speaking for this Court, reasserted this rule in the following language:

> "* * * Hence, as in case of other terms or phrases used in that section, *Duparquet Huot & Moneuse Co.* v. *Evans*, 297 U. S. 216, we adhere to the familiar rule that where words are employed in an act which had at the time a well known meaning in the law, they are used in that sense unless the context requires the contrary. *Keck* v. *United States*, 172 U. S. 434, 446" (p. 115).

Manifestly, the Debtor could not perform its duties under either the original or the amended Section 77 without recourse to the trust estate for the heavy expenses necessarily entailed and which occur and recur at every stage of the proceeding, and the striking thing is that no one seemed to think otherwise during the first four years of operation under the statute, and no one seemed to think otherwise during the exhaustive consideration of every phase of the subject incident to the recommendation of the Federal Coordinator of Railroads embodied in the amendatory Section 77 approved August 27, 1935.

The first suggestion that the trustee might properly decline to provide for the debtor's expense came (as we understand) from the trustee of the Missouri Pacific Railroad Company some time in 1936, after more than $200,000 had been provided by the same trustee in connection with various reorganization proposals sponsored by the late Messrs. Van Sweringen. A similar position was taken at or about the same time by the trustee of the Chicago and

Eastern Illinois Railroad Company. Although doubting the Commission's authority over the debtor, counsel for these debtors applied to the Commission to fix a maximum and this the Commission did. (*Missouri Pacific Railroad Company Reorganization*, 217 I. C. C. 397; *Chicago & Eastern Illinois Railway Company Reorganization*, 217 I. C. C. 497.) Later the District Judge for the District of Colorado inquired as to the Commission's interpretation of Paragraph 12 and under date of August 10, 1937, Chairman Meyer replied by forwarding its report in one of these cases and stating that the Commission's Division 4 believed that this Paragraph embraced the debtor, adding, however, "In certain of the reorganization proceedings the District Courts have, upon petition without reference to the Commission, authorized the expenditure by the debtors of funds for printing and for other purposes in connection with the preparation of plans of reorganization. In such instances, the Courts appear to have proceeded upon a theory at variance with the views of Division 4 as expressed in the attached report."

That Division 4 was wrong and the Courts were right as to the true understanding and intent of Congress is readily demonstrable by the legislative history of the Section.

Following the hearings held by the Judiciary Committee of the House of Representatives on H. R. 6249, Chairman Sumners introduced a new or substitute Bill which became H. R. 8587 and which reflected the changes desired by the Judiciary Committee in the pending H. R. 6249. On June 21, 1934, the Judiciary Committee reported this substitute Bill for favorable action by the House of Representatives (House of Representatives, Report No. 1283). Paragraph 12 of this substitute Bill was, so far as material, as follows:

"The judge may, within such maximum limits as are fixed by the Commission, allow a reasonable reimbursement, to be paid out of the debtor's estate, for the actual and reasonable expenses incurred in connection with the proceeding and plan by parties in interest, trustees under indentures, depositaries, reorganization managers and committees or other representatives of creditors or stockholders, and by such assistants as the Commission, with the approval of the judge, may specially employ."

In the Report of the Judiciary Committee we find the following reference to this provision (p. 8):

"It will be noted that no compensation under the final draft can be rendered for services rendered by the trustees, reorganization managers, committees, or their attorneys. All that is allowed is reimbursement for actual and reasonable expenses incurred. In other words, the debtor's estate shall be responsible for expenses but not for compensation for services rendered."

On August 15, 1935, the House of Representatives resolved itself into a committee of the whole for consideration of H. R. 8587. Chairman Sumners of the Judiciary Committee offered several amendments, one of which is the present Paragraph 12. In explaining this substitute Paragraph 12, Chairman Sumners said:

"A large percentage of the Committee felt that each class should pay their own attorneys' fees. The Chairman of the Committee shared in this view as an original proposition, but from my examination into the question and from the best technical advice we could get, the majority of the Committee became apprehensive that unless it was possible to pay some attorneys' fees from the estate, the small person in interest might not be represented, in view of the fact

> that they have not been able to make satisfactory progress under existing law with reference to reorganization, and *in view of the fact that the Railroad (Interstate Commerce) Commission would fix the total fees that could be allowed for reorganization* and the Courts are given further power to check this, the Committee was afraid to take the responsibility to eliminate these fees, taking the position that we should let it run along awhile and see what will happen."

After replying to a question asked by one of the members of the House, Chairman Sumners continued:

> "I say very candidly that if the Committee had felt the situation was not so critical with regard to the reorganization of these roads it very probably would have taken a chance on eliminating the fees, but it did not want to take the responsibility at the time" (Congressional Record, Vol. 79, Part 12, pp. 13298-13308).

The House Bill was sent to the Senate and was accepted by Chairman Wheeler of the Committee on Interstate Commerce as a substitute for its own Bill S-1634. The Interstate Commerce Committee reported this Bill favorably for action by the Senate in its Report No. 1336, 74th Congress, 1st Session. In this Report it is stated

> "Under the present provisions of Section 77, both compensation and expenses payable out of the debtor's estate may be allowed to officers, parties in interest, reorganization managers and committees or other representatives of creditors or stockholders and their attorneys, for services in connection with reorganization. These provisions are apt to induce many persons to attempt to participate in reorganizations with the hope of being compensated at the expense of the debtor and will tend to extravagance.

> Consequently, S. 1634, as amended, provides that such parties may be paid only their expenses, compensation being eliminated, the allowances to be made by the Court within the maximum prescribed by the Commission."

But in transmitting this Report, Senator Wheeler, Chairman of the Interstate Commerce Committee, reported that the House of Representatives in H. R. 8587 had reversed itself and had concluded to allow compensation. The following is an excerpt from his statement to the Senate:

> "The present provisions of Section 77 allow both expenses and fees to be paid to the designated interested parties out of the debtor's estate. This was regarded as an invitation to exploitation. The House Judiciary Committee consequently eliminated fees entirely, allowing only expenses. On further investigation, it found that this was too rigorous." (Congressional Record, Vol. 79, Part 13, pp. 13764-13769.)

This can leave no reasonable doubt in a judicial mind that Paragraph 12 was designed to cover the fees and allowances of volunteers and not of the debtor, whose expenses are an essential part of the proceeding. The fact that the Senate Committee on Interstate Commerce and the Judiciary Committee of the House of Representatives both considered entirely eliminating Paragraph 12 demonstrates that Congress could not have thought otherwise.

Those who have assumed that the debtor is subject to Paragraph 12 refer to the words "parties in interest" as being broad enough to describe and bring within its operation the debtor itself.

It must be remembered, however, that broad language such as this is subject to the restraint of legislative intent as determined by the context and by the statute as a whole.

As stated by Judge SUTHERLAND in his work on Statutory Construction (3376):

> "Words or clauses may be enlarged or restricted to effectuate the intention or harmonize them with other express provisions. Where general language construed in a broad sense would lead to absurdity it may be restrained. The particular inquiry is not what is the abstract force of the words or what they may comprehend but in what sense they were intended to be used as they are found in the Act."

This rule has been applied in the leading cases set forth in the subjoined footnote. In one of these cases—*Saginaw Broadcasting Co.* v. *Federal Communications Commission*—the Circuit Court of Appeals for the District of Columbia stated this rule as follows:

> "It is an often quoted principle of statutory construction that the literal words of a statute are to be read in the light of the purpose of the statute taken as a whole, and that the literal meaning will not be followed when it appears that to do so would, in view of the purpose of the statute, lead to an absurd or unjust result."

Recapitulating in part what already has been said, we submit that there are at least five reasons, each sufficient in itself and each independent of the others, why the debtor is not a party in interest within the meaning of that phrase as used in Paragraph 12 of Subsection (c):

First: If the expert draftsmen who framed the Act had intended to include the debtor within the operation of Para-

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Church of the Holy Trinity v. *United States*, 143 U. S. 457, 472;
Hawaii v. *Mankichi*, 190 U. S. 197, 212;
Oswa v. *United States*, 260 U. S. 178, 194;
Saginaw Broadcasting Co. v. *Federal Communications Commission*, 96 F. (2d) 554, 558;
Donnelly Garment Co. v. *International L. G. W. Union*, 99 F. (2d) 309, 317.

graph 12 they would have named the debtor specifically as they did in the very next succeeding Paragraph 13.

Second: Section 77 in its original form left the debtor in possession of its entire estate subject to *no* restraint save such as might be imposed by the administrative court, and even under the amendatory Section 77 and specifically in Paragraph 12 recognition is given to the fact that the debtor continues until divested by final decree to be the beneficial owner of the trust estate.

Third: Unrestricted recourse to the trust estate, of which the debtor continues to be the beneficial owner, is the only resource available to the debtor to enable it to perform the important duties resting upon it by mandate of the statute, and the authority of the District Court having exclusive jurisdiction of the debtor's estate to require the Trustee to provide the debtor with funds necessary in the performance of these duties is part of its judicial power protected by the Constitution.

Fourth: The reports of Chairman Sumners of the Judiciary Committee of the House of Representatives, and Chairman Wheeler of the Interstate Commerce Committee of the Senate, presenting the amendatory Section 77, make it clear that Paragraph 12 was intended as a restraint upon volunteers and not those who are essential parties to the reorganization proceeding.

Fifth: The inclusion of the debtor in Paragraph 12 would render it unconstitutional or at least raises a grave question as to its constitutionality.

The basic constitutional objection to Paragraph 12 if construed to include the debtor is that as so construed it

confers upon the Interstate Commerce Commission an unreviewable judicial power which belongs to the Courts under the Constitution; because, as stated by Mr. Justice BUTLER, speaking for this Court in *United States v. New River Colliers Company* (262 U. S. 341):

> "The ascertainment of compensation is a judicial function, and no power exists in any other department of the Government to declare what the compensation shall be or to prescribe any binding rule in that regard."

Since under Paragraph 12 the judge is authorized to revise downward but not upward (no matter how inadequate) an allowance of compensation fixed by the Interstate Commerce Commission, we submit that this provision of the statute becomes unconstitutional unless, as seems quite clearly to have been the legislative intent, it is restricted in its application to parties who ask compensation for services rendered as volunteers and is held inapplicable to parties entitled as a definite legal right to payment out of the trust estate of just and reasonable compensation judicially ascertained and determined. Such parties are entitled to a determination which is purely judicial, and this Paragraph 12 does not even purport to give.

It may be true as held by Judge HINCKS in the matter of the reorganization of the New York, New Haven and Hartford Railroad Company (referred to in the brief of the Petitioner) that the District Court has power to withhold approval of a Plan certified to it by the Interstate Commerce Commission if it fails to provide for just and reasonable compensation to those entitled to it as a matter of right; but it is difficult to spell out of this theoretical power the provision of a judicial review sufficient to save Paragraph 12 as construed by the Interstate Commerce

Commission from constitutional infirmity. Such method of review is not a practical one. The injured parties themselves would hesitate to assert their constitutional right by asking the District Court to delay for months, perhaps for years, a vast financial readjustment closely and definitely related to the public interest. The Court would be equally reluctant to resort to such a method of review unless, as was the situation in which Judge HINCKS found himself, it should be necessary to disapprove the Plan for other reasons. Moreover, it would be patently unreasonable to assume that Congress ever intended that the District Court should be placed upon the horns of such a disturbing dilemma. So we come back to our fundamental contention that Paragraph 12 was intended to curtail largess but not to undermine contract obligations or property rights protected by the Fifth Amendment. To say the very least any other construction of Paragraph 12 would raise serious constitutional questions; and it is a traditional doctrine of this Court that in the interpretation of Congressional legislation grave constitutional questions are to be avoided. Mr. Chief Justice WHITE, speaking for this Court in *United States* v. *Delaware & Hudson Co.* (213 U. S. 366) stated this rule as follows:

> "It is elementary when the constitutionality of a statute is assailed, if the statute be reasonably susceptible of two interpretations, by one of which it would be unconstitutional and by the other valid, it is our plain duty to adopt that construction which will save the statute from constitutional infirmity" (p. 407).

This doctrine applies with peculiar aptness in a case such as this where the statutory language is susceptible of an interpretation which will give effect to a reasonable legislative intent without at the same time approaching at all close to

the danger lines charted by well-established principles of constitutional law. Agreeably to this rule, Paragraph 12 of Subsection (c) of Section 77 of the National Bankruptcy Act should, we submit, be construed as its language plainly requires as a *permissive* statute limited in its application to those parties who tender their aid in the hope of reward voluntarily granted and not extended to those who are indispensable parties to the proceeding and are participating therein in the performance of a duty which they cannot avoid. In many cases, of which the present case is illustrative, this would exclude the trustee of an indenture. *In all cases, however, it would exclude the debtor whose entire estate passes from its dominion and control upon the filing of a Petition under Section 77 but upon whom rests imperative duties which continue throughout the proceeding.*

It must be borne in mind, moreover, that in these Section 77 proceedings the Interstate Commerce Commission almost invariably becomes the proponent of the Plan of Reorganization which may (and in most cases does) place it in a position adverse to the debtor and not infrequently in a position adverse to the trustees under the junior mortgages. To give a non-judicial body such as the Interstate Commerce Commission the further power to deny its adversaries access to their own trust estate in resisting what may be (and ordinarily is) a confiscatory Plan of Reorganization affecting their vital interests is to create a situation repugnant to our ideals of fair play and to our traditional notions of elemental justice.

In its actual performance under its own interpretation of Paragraph 12, the Interstate Commerce Commission has not only seriously impaired the capacity of the debtor to perform its statutory functions but has at the same time

vastly increased the litigious strength of the Insurance Groups and the Savings Bank Groups which already was overwhelming and has accomplished precisely what Chairman Sumners stated the Judiciary Committee was seeking to avoid.

Let us show what the Interstate Commerce Commission has done and is doing by referring to certain of its own official records which are typical of many others.

We quote the following from the Report of Division 4, dated January 14, 1941, relating to the efforts of the Directors of the Chicago and North Western Railway Company to secure counsel to represent the debtor in the spring of 1940:

> "At the meeting of the board on October 9, 1940, (error, the correct date is May 29, 1940) the committee of three presented a report of its further activities, including the task of employing counsel. One of the difficulties was that the committee had been unable to secure from individual members of the board of directors a personal guarantee of any counsel fees that might be incurred. Finally, after the committee had tendered employment to three separate attorneys or groups of attorneys, an acceptance was received from Luther M. Walter under date of May 28, 1940. Since June 10, 1940, when he was substituted for counsel who had formerly represented the debtor, Walter has acted and is now acting as counsel for the debtor in its reorganization proceedings" (242 I. C C. 787, p. 791).

Counsel hesitated to accept a retainer to oppose a plan promulgated by the Interstate Commerce Commission if, as it asserted, it had the authority to say how much they would be paid or whether they would be paid at all.

That their reluctance was justified was soon made definite, and certain by the report of the Commission itself in

Chicago, Milwaukee, St. Paul and Pacific Railroad Company Reorganization (244 I. C. C. 445).

We quote briefly from the Report of Division 4 in that proceeding:

> "Opposition to the debtor's petition for allowance of expenses of the appeal has been offered by the mutual savings bank group, the life-insurance group, and the Reconstruction Finance Corporation. The grounds of their objections are similar to those stated in the report of the Commission, by division 4, of January 14, 1941, in *Chicago & N. W. Ry. Co. Reorganization, supra.*
>
> The Commission's decision in that case is controlling in the instant case.
>
> Therefore, we conclude that so far as the petition relates to the fixing by us of a maximum limit of allowance we should deny the debtor's petition requesting the entry of an order authorizing and directing the debtor's trustees to expend funds of the trust estate for expenses and liabilities incurred and to be incurred by and on behalf of the debtor in preparing and presenting objections to the plan of reorganization certified by the Commission to the Court and in perfecting and prosecuting an appeal from the court's order approving that plan, such action to be without prejudice to renewal of the petition at such time as the debtor is prepared to show actual expenses incurred and the resulting benefit to the estate" (p. 448).

What the Interstate Commerce Commission means by "the resulting benefit to the estate" has not been made clear. Certainly it means something more in the Commission's mind than the orderly performance of necessary and proper service in the assertion of legal rights. It is perhaps significant that a member of Division 4 of the Inter-

state Commerce Commission appeared before the Judiciary Committee of the House of Representatives and urged that language to this effect be inserted in Paragraph 12 of Section (c) of the pending Bill, but the Judiciary Committee did not accept the suggestion.* If the Commission's theory is correct it would never be possible to show benefit to the trust estate resulting from an unsuccessful attack in the District Court upon a Plan of Reorganization certified to it by the Interstate Commerce Commission or resulting from an unsuccessful appeal from an order of a District Court confirming such a Plan. The practical result of this conception of Paragraph 12 is that the debtor cannot proceed as an active party after a Plan is certified to the Court unless counsel are willing to take the risk of losing all of their disbursements and of receiving no compensation if the Commission's Plan is confirmed by the Court. This, we submit, denies the debtor the day in court which is assured by the statute.**

The most extreme illustration of the practical application of the Commission's interpretation of Paragraph 12 is afforded by the case of *Chicago and N. W. Ry. Co.* (121 F. (2d) 791).

The Interstate Commerce Commission promulgated and certified to the District Court a plan of reorganization for Chicago and North Western Railway Company which entirely eliminated the equity represented by its capital stock.

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* Hearings before the Committee on the Judiciary, House of Representatives, 74th Congress, on H. R. 6249 (pp. 69-70).

** The Commission declined to allow counsel to be reimbursed for the cost of printing the Record in the case of *The Denver and Rio Grande Western Railroad Company* v. *Wilson McCarthy and Henry Swan, Trustees* (141 F. (2d) 824), because notwithstanding the illuminating opinion of Judge Phillips defining the rights of the debtor, there was a technical affirmance and the Commission could perceive no direct financial benefit to the debtor's estate (242 I. C. C. 619).

The debtor, after having at the eleventh hour, following three prior refusals, secured counsel willing to take the risk of representing it further in the proceeding, filed objections. The District Court approved the plan and the debtor appealed to the Circuit Court of Appeals. The debtor then applied to the District Court for an order directing the trustee appointed under Section 77 to provide the estimated cost of certifying and printing a transcript of the record. The District Court filed a memorandum stating that it thought it "desirable from the standpoint of the debtor and from the standpoint of everybody concerned *and from the standpoint of society* (our italics) that the judgment which has been rendered here be demonstrated to be fair and equitable, if it is; and if it is not it ought to be overturned," but assuming that it was without power to grant the debtor's application for funds to finance the appeal except within limits fixed by the Interstate Commerce Commission, the Court referred the application to the Interstate Commerce Commission to fix a maximum under Paragraph 12. The Interstate Commerce Commission, being unwilling to permit the trust estate to be resorted to to finance an appeal from an order of a District Court approving one of its certified plans, denied the petition for the fixation of a maximum "without prejudice to renewal of the petition at such time as the debtor is prepared to show actual expenses incurred *and the resulting benefit to the estate*" (our italics). The debtor then applied to the District Court in the alternative for two orders, one directing the Interstate Commerce Commission to fix a maximum and one directing the trustee to provide the funds regardless of the action or inaction of the Commission. The District Court denied both applications and the debtor appealed and secured from the Circuit Court of Appeals an order dispensing with a printed record in connection there-

with. The Circuit Court of Appeals heard both appeals, resolving itself into a three-judge court in respect of the appeal seeking to control the Commission's action. As a three-judge Court it affirmed the District Court but as the Circuit Court of Appeals it reversed the District Court in refusing to act independently of the Commission and remanded the proceeding "with directions to the District Court to hear and pass upon the petition of appellant."

The following brief excerpt from the opinion of the Circuit Court of Appeals, written by Judge EVANS, gives the gist of the Court's decision:

> "(11) It is readily apparent why the Congress provided that the Commission should fix the maximum limit for compensation and expenses of attorneys and committees who rendered services before it, and left to the court full discretion in matters relating to appeals and all other matters concerning the value of which the Commission had no special knowledge. Equally persuasive with us is the fact that Congress would hardly have provided for the lodgment in the I. C. C. of authority to submit and adopt a plan of reorganization and, at the same time, place in the same body the power to prevent security holders whose rights were abrogated, from effectively prosecuting an appeal therefrom. Far more natural and logical would be the location of the power which permitted the District Court, which is not so directly responsible for the plan, to allow the stockholders who have lost their entire holdings in the company to prosecute an appeal and to authorize out of the debtor's estate, a payment of the printing bill on said appeal.
>
> The last sentence of subsection (12) confirms this view. It provides that the 'Commission shall . . . *after hearing*, fix the maximum allowances which may be allowed by the court.' How could there be a hearing on the reasonableness of services not yet

rendered? This language contemplated only allowances for services or expenses that have been rendered, not for those which will be rendered.

The precise question is whether a court, having jurisdiction of the debtor, and to put into effect a plan of reorganization which eliminates all holders of the debtor's stock, may not authorize, for the purpose of testing the validity of the plan, the costs of printing the record on appeal, out of the debtor's estate.

In the absence of express statutory denial of authority, we hold that a court having the exclusive jurisdiction of the debtor and the debtor's estate, and having the power and jurisdiction of a court of bankruptcy and, also, of a court of equity in a suit where a receiver has been appointed, possesses that power.

(12) If subsection (12) does not limit the court's jurisdiction, then clearly there is no other statutory limitation of its powers. At most, subsection (12) is but an implied limitation on the court's power. It is not a limitation on the court's jurisdiction of the subject-matter. The limitation is in reference to services which *have been* rendered by the parties in interest and by committees or other representatives of creditors. The services therein referred to, *have been rendered*. For the greater part they were rendered by the parties before the I. C. C. They deal with services rendered and expenses incurred in submitting the plan of reorganization before the I. C. C. They do not refer to services to be performed or expenses to be incurred in the future. Of the necessity and reasonableness of future services and expenses, the trial court, rather than the I. C. C., is the best judge. Moreover, the jurisdiction is in the court, unless taken from it and placed in the I. C. C. by this subsection of the statute" (pp. 799, 800).

While this decision is sound and salutary as far as it goes, we respectfully suggest that it is unsound if it implies that Paragraph 12 authorizes the Interstate Commerce Commission at any stage of a proceeding under Section 77 to curtail the power of the Court to give a debtor recourse to its own trust estate in the protection of its own property rights.

It is just as essential for a debtor in the performance of its duties under Section 77 "to be represented by competent counsel" before the Interstate Commerce Commission "and to have reasonable allowances made for the expenses incurred and the services rendered by such counsel" (we again quote from the opinion of Circuit Judge PHILLIPS in *The Denver and Rio Grande Western Railroad Company* v. *Wilson McCarthy, et al., supra*) as it is before the Court, and we think it quite beyond the Constitutional power of Congress to say that the judicial power of the Court having exclusive jurisdiction of the debtor's estate to assure this must be exercised in subordination to an administrative board such as the Interstate Commerce Commission.

The continuing duties resting upon the debtor under Section 77 involve a task recognized and described by this Court in the *Rock Island* case* as a task calling "for a degree of consideration and an extent of detailed work almost beyond the power of appreciation."

What Congress clearly intended was, we submit, not to empower an administrative board adversely interested to limit the activity and destroy the efficiency of the debtor in the performance of these duties and in the guardianship

* *Continental Illinois National Bank and Trust Company* v. *Chicago, Rock Island and Pacific Railroad Company*, 294 U. S. 648.

of its own trust estate (at least half a dozen times in Section 77 the trust estate is referred to as "the debtor's estate") but was to safeguard and limit access to that estate on the part of self-constituted representatives of security holders, banker appointed committees and reorganization managers, and other types of *entre preneur* who may, as in the 1928 reorganization of the Chicago, Milwaukee and St. Paul Railway Company, seek to utilize the debtor's plight as an opportunity for early retirement to lives of leisure and affluence.

All of which is respectfully submitted for such consideration as this Court may deem appropriate.

December 19, 1942.

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As Amicus Curiae.

SUPREME COURT OF THE UNITED STATES.

Nos. 387-388.—October Term, 1942.

Reconstruction Finance Corporation, Petitioner, vs. Bankers Trust Company, Trustee.	On Writs of Certiorari to the United States Circuit Court of Appeals for the Eighth Circuit.

[February 8, 1943.]

Mr. Justice Roberts delivered the opinion of the Court.

This controversy arises in a proceeding under § 77 of the Bankruptcy Act[1] for the reorganization of the St. Louis-San Francisco Railway Company system, part of which is the Kansas City, Fort Scott & Memphis Railway, under a mortgage of whose property the respondent Bankers Trust Company is trustee. The respondent obtained leave to intervene in the District Court and before the Interstate Commerce Commission,[2] and participated in the proceedings.

The Commission approved a plan of reorganization, and the District Court, with the plan before it, directed the filing of all petitions for allowance of "compensation for services rendered or for expenses (including reasonable attorneys' fees) incurred either under clause (12) of subsection (c) of Section 77[3] . . . or otherwise" . . .

The respondent filed two such petitions, numbered respectively 266 and 267, each praying stated amounts as compensation for services as indenture trustee, for counsel fees, and for expenses. The sums named and the services recited in the two petitions were identical, but in 267 the compensation was claimed under § 77(c)(12), and the right was reserved to object to the jurisdiction of the Commission. That petition was sent by the court to the Commission for the fixing of a maximum allowance. Prior to the Commission's action thereon, 266 came on for hearing by the court.

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[1] March 3, 1933, c. 204, 47 Stat. 1474, as amended; 11 U. S. C. § 205.

[2] Pursuant to § 77(c)(13); 11 U. S. C. § 205(c)(13).

[3] 11 U. S. C. § 205(c)(12).

In 266 the respondent alleged that the services had "not been rendered or incurred 'in connection with the proceedings and plan'" for reorganization, but by respondent as trustee under the mortgage in performance of its fiduciary duties, for the benefit of the trust estate, as distinguished from the debtor's estate.

Over opposition by petitioner, a creditor and an intervenor, the court ruled that § 77(c)(12) did not apply, that the mortgage rendered the claim a proper charge on the mortgaged property, and directed the respondent to pay itself the amounts claimed out of cash deposited with it as indenture trustee.

The Commission held hearings on 267 and on other claims for allowances under § 77(c)(12). In a report it held that it had jurisdiction to fix a maximum amount to cover the items embraced in respondent's claim in 267, which it found were rendered in connection with the proceedings and the plan during the pendency of the § 77 proceeding.[4] It fixed maxima below the amounts claimed for the several items of service and expense.

The court refrained from passing on this portion of the Commission's report. The petitioner appealed from the order in 266, and the Circuit Court of Appeals affirmed the judgment.[5] Due to the importance of the questions raised in the administration of the statute and a conflict of decision,[6] we granted certiorari.

Section 77(c)(12), which appears in the margin,[7] empowers the Commission to fix a maximum allowance "out of the debtor's estate" for the expenses (including attorneys' fees) and services

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[4] St. Louis-San Francisco Ry. Co. Reorganization, 249 I. C. C. 195, 218.

[5] 129 F. 2d 122. 46 Fed. Supp. 236.

[6] In re New York, N. H. & H. R. R. (D. Of Conn., #16,862, June 2, 1942).

[7] "Within such maximum limits as are fixed by the Commission, the judge may make an allowance, to be paid out of the debtor's estate, for the actual and reasonable expenses (including reasonable attorney's fees) incurred in connection with the proceedings and plan by parties in interest and by reorganization managers and committees or other representatives of creditors and stockholders, and within such limits may make an allowance to be paid out of the debtor's estate for the actual and reasonable expenses incurred in connection with the proceedings and plan and reasonable compensation for services in connection therewith by trustees under indentures, depositaries and such assistants as the Commission with the approval of the judge may especially employ. Appeals from orders of the court fixing such allowances may be taken to the circuit court of appeals independently of other appeals in the proceeding and shall be heard summarily. The Commission shall, at such time or times as it may deem appropriate, after hearing, fix the maximum allowances which may be allowed by the court pursuant to the provisions of paragraph (12) of this subsection (c) and, after hearing if the Commission shall deem it necessary, the maximum compensation which may be allowed by the court pursuant to the provisions of paragraph (2) of this subsection (c)."

of "trustees under indentures", for expenses incurred and services rendered "in connection with the proceedings and plan". It emphasizes that the expenses, the fees, and the services must be "reasonable" and the allowance therefor "reasonable". The court is to make the allowance "within such maximum limits as are fixed by the Commission".

The questions presented are: (1) does the subsection apply to the respondent's claims, and (2) if it does, is it valid? We answer both in the affirmative.

First. The respondent contends that the expenses and services for which compensation was allowed were not those referred to in § 77(c)(12). This, notwithstanding acquiescence in the holdings of the court below, which we think correct, that the term "debtor's estate" as used in the act embraces cash deposited with the indenture trustee and that the services and expenses in question were rendered and incurred "in connection with the proceedings and plan."[8]

The basis of the contention and of the decision below is that the services and expenses in question are "not within the meaning of" the subsection as the claim for their allowance is based upon the contract expressed in the mortgage[9] and is for services required by the mortgage to be rendered the trust estate in fulfilment of the respondent's obligations.

The subsection applies in terms to allowance of claims such as those here in issue. No legislative history is cited to the contrary. The statute deals with other claims arising out of contract and secured by liens fixed or inchoate, and no basis is suggested for excluding the respondent's claim from its sweep.

Second. The main argument advanced in support of the judgment is that to apply § 77(c)(12) to the respondent's claims would violate the Fifth Amendment of the Constitution, by depriving the courts of power to determine whether the Commission's decision was contrary to law or without evidence to sup-

[8] None of the services were routine administrative services currently rendered by the trustee; none were of non-routine character rendered prior to the inception of the reorganization proceeding. If they had been of these descriptions the petitioner concedes allowance for them would be a matter for the court under § 77(c), 11 U. S. C. 205(c).

[9] Article Twenty-third of the Indenture: "The Trustees shall be entitled to reasonable compensation for all services rendered by them in the execution of the trusts hereby created, which compensation as well as all reasonable expenses necessarily incurred and actually disbursed hereunder, the Railway Company agrees to pay and hereby charges on the trust estate."

port it; and by destroying respondent's vested property rights. In addition, it is urged that by Art. III, Section 1, the judicial power of the United States is vested exclusively in the courts and matters of private right may not be relegated to administrative bodies for trial. The statute, fairly applied, in the circumstances disclosed by the record does not contravene any constitutional provision.

Three diverse conclusions respecting the effect of § 77(e)(12) have been expressed by the courts. It has been held that the maximum fixed by the Commission is in all circumstances binding and unalterable.[10] The court below has concluded that the subsection has no application to the claims of an indenture trustee, secured by a lien on the trust estate pursuant to the mortgage contract. The District Court of Connecticut has decided that the court may set aside the maximum named by the Commission, if found unreasonably low, and return the matter to the Commission for a fresh determination.[11] The petitioner states its view that "while the statute is not entirely clear, judicial review of the maximum is permitted". After mentioning matters of law which are for the court's determination on review of the Commission's report, such as whether the services in question are to be compensated under the provisions of the Act, and others we need not mention, the petitioner refers to § 77(e)[12] which provides that the judge shall approve the plan if satisfied, *inter alia*, that the "amounts to be paid . . . for expenses and fees incident to the reorganization . . . are reasonable, [and] are within such maximum limits as fixed by the commission" . . . . It is suggested that if the judge finds that any allowance within the maximum would be unreasonably low he may thereupon, under § 77(e), disapprove the plan and either dismiss the proceeding or refer the cause back to the Commission for further action.

None of these views seems to us rightly to construe the statute. We think the Congress did not intend to deny the courts all power of review of Commission action in such cases. The statute plainly

[10] In re Chicago, M., St. P. & P. R. Co., 121 F. 2d 371; In re Chicago & N. W. Ry. Co., 35 F. Supp. 230; In re Chicago, G. W. R. Co., 29 F. Supp. 149. It is suggested this view is sustained by the legislative history of the section. But the changes made by amendment in another section (77e) are not helpful; and the testimony before the Judiciary Committee of the House is neither the sort of legislative material this court holds relevant to the construction of a statute, nor is it clear or definite upon the point at issue.

[11] In re New York, N. H. & H. R. R., *supra*, note 6.

[12] 11 U. S. C. 205(e).

requires reference to the Commission of claims of the class under consideration, a hearing by that body, the setting of a maximum and action by the court on the footing of the Commission's report. It does not contemplate a hearing *de novo* on the issue of the reasonable worth of the services rendered or the propriety of the expenses incurred, or a reappraisal by the court of the facts. Moreover the procedure suggested by petitioner does not comport with the evident purpose of § 77(e)(12) which appears to treat the court's action with respect to such claims as a matter distinct from his final action on the plan as a whole under § 77(e).

Our conclusion is that the function committed by the law to the Commission is the ordinary one reposed in a fact finding body and that its findings, supported by evidence, may not be disturbed by a court. This construction of the Act leaves the court free to decide upon the basis of the Commission's report all questions of law. With respect to the amount set as a maximum the only question of law which can arise is whether there is substantial evidence to support the Commission's finding. If there is not the court may so hold, set aside the finding and return the matter to the Commission. Under the terms of the subsection the judge's action upon the claim is subject to appeal independently of other issues, to the Circuit Court of Appeals.

Thus understood, we find no infirmity in the statute. The committal to the Commission of the fact finding office raises no substantial question under the Fifth Amendment. In actions at law a jury is the traditional trier of facts, whose function as such is preserved and guaranteed by the fundamental law. But courts of equity, of admiralty and of bankruptcy, by themselves and their mandatories examine and decide disputed questions of fact; and no reason is perceived why claims of the sort here involved should not be litigated, as are other claims against bankrupt estates, by such machinery and in such manner as Congress shall prescribe, saving to the claimant the right of notice and hearing, and such review as is provided by the statute as we construe it.

At law the jury's verdict settles issues of fact and defines rights, subject only to questions of law. In administrative procedure, the findings of the administrative body may likewise be made conclusive of fact issues, and equally define rights and duties subject only to questions of law. No question is made as to the competency of the Interstate Commerce Commission to appraise evidence and to draw an informed and intelligent conclusion as to

what is a maximum reasonable compensation for services rendered. Indeed, since most of the services are performed in connection with its activities it is probably in a better position to judge of their value to the reorganization than any court or other fact finding instrumentality.

To prescribe a method of trial of facts, subject to a court's supervision in matters of law, is not, as respondent suggests, to destroy vested rights, but to provide a method of appraising and liquidating them. The statute awards the claim priority of payment, so that respondent is not called upon, as are some other classes of creditors, to suffer an abatement of its claim.

The judgment is reversed and the cause remanded to the District Court with instructions to proceed in conformity with this opinion.

So ordered.

SUPREME COURT OF THE UNITED STATES.

Nos. 387 and 388.—October Term, 1942.

Reconstruction Finance Corporation, Petitioner, vs. Bankers Trust Company, Trustee. (387)	On Writs of Certiorari to the United States Circuit Court of Appeals for the Eighth Circuit.
Reconstruction Finance Corporation, Petitioner, vs. Bankers Trust Company, Trustee. (388)	

[February 8, 1943.]

Mr. Justice Douglas, concurring.

While I concur in the result and in most of the opinion of the Court, I am in disagreement with the majority on one phase of the case.

I do not think that the maximum allowance made by the Commission for fees and expenses is subject to review by the District Court. Sec. 77(e)(2) now provides that the judge shall approve the plan if satisfied that the amounts to be paid for fees and expenses have been disclosed, "are reasonable, are within such maximum limits as are fixed by the Commission, and are within such maximum limits to be subject to the approval of the judge". Prior to the 1935 amendments to § 77, that provision, then contained in subsection (g)(2) read differently. Though subsection (f) then stated that the Commission had to "fix the maximum compensation and reimbursement" which might be allowed by the court, subsection (g)(2) provided for approval of the plan by the judge if he was satisfied that all such amounts "have been fully disclosed and are reasonable, or are to be subject to the approval of the judge". The changes made by the 1935 amendments are significant. The total amount of fees and expenses fixed by the Commission became a ceiling beneath which the judge could make readjustments but above which he could not go. Prior to those amendments judicial review of the maximum fixed by the Commission might have been permissible. But the changes made in

1935 clearly indicate, as Judge Evans said in *In re Chicago, M., St. P. & P. R. Co.*, 121 F. 2d 371, 374, that the "court was ultimately to determine the amount of the fee", its action however being "limited by the maximum fixed by the Commission." The legislative history of the 1935 amendments supports that view.[1] Indeed the Committee Reports stated[2] that the "allowances to be made by the court" were to be "within the maximum prescribed by the Commission." H. Rep. No. 1293, 74th Cong., 1st Sess., p. 3; S. Rep. No. 1336, 74th Cong., 1st Sess., p. 4.

That construction also squares with other provisions of § 77. Thus subsection (c)(12) provides that the judge may make an allowance "within such maximum limits as are fixed by the Commission". It also requires the Commission to "fix the maximum

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[1] The testimony of Mr. Craven, the draftsman of the bill, is illuminating:

"Mr. Burgess. That is the provision of this act that the maximum is to be approved by the Commission. The objection that I was making was directed to Commissioner Mahaffie's addition to that. It seems to me that the provision for the approval is adequate. I am not sure whether that maximum is appealable. Are you, Mr. Craven? That is, can the fixation of a maximum by the Commission be appealed under this act?

Mr. Craven. I think not.

Mr. Burgess. You think not?

Mr. Craven. That is my recollection of it.

Mr. Cellar. Even if the court would accept the maximum there would be an appeal from the court's ruling?

Mr. Burgess. I do not know of any appeal that you can take from the Commission's fixation of a maximum under this act.

Mr. Cellar. That does not seem right.

Mr. Burgess. That (sic) is no appeal from the court's fixation, of course, but that would have to be within the maximum, so I do not know of any appeal.

Mr. Michener. There are a number of powers from which you cannot appeal so far as the decision of the Commission is concerned. They are really given more power in some particulars than the judge.

Mr. Cellar. That leaves the entire matter in the hands of the Interstate Commerce Commission, practically speaking.

Mr. Michener. Yes.

Mr. Burgess. Yes.

Mr. Cellar. With no right of appeal at all if the maximum is accepted by the court?

Mr. Burgess. That is my understanding. If Mr. Craven has a different view, I should be glad to accept his view.

Mr. Craven. That is my understanding of it."

Hearings on H. R. 6249, House Committee on the Judiciary, 74th Cong., 1st Sess., Ser. 3, p. 86. And see the testimony of Commissioner Mahaffie at p. 70 which is also quoted in *In re Chicago, M. St. P. & P. R. Co.*, *supra*, p. 374.

[2] The committee print of the bill provided for allowance of expenses and of compensation. See subsections (c)(12) and (c)(2) of H. R. 6249, 74th Cong., 1st Sess., Hearings on H. R. 6249, *supra*, pp. 6, 7. As recommended by both the House and Senate committees, allowance for expenses but not for compensation were provided. The provision for allowance of fees was later restored. 79 Cong. Rec., 74th Cong., 1st Sess., p. 13763.

allowances which may be allowed by the court". They indicate to me that in line with the minority views in *United States* v. *Chicago, M., St. P. & P. R. Co.*, 282 U. S. 311, which § 77 adopted (see Congressman La Guardia, 76th Cong. Rec., 72nd Cong., 2d Sess., p. 5336), the drain on the cash resources of railroads was to be controlled by entrusting to the Commission the responsibility for determining the total amount of cash which should be expended for fees and expenses. Within those limits the courts could make a fair allocation among the various claimants. But beyond those limits the courts could not go. There might of course be questions of law affecting the aggregate maximum allowances made by the Commission which the District Court could review. Thus if in this case the Commission had held that the services rendered by respondent were not within the scope of § 77(e)(12), that ruling could be reviewed and the matter would then have to be remanded to the Commission for a new determination. § 77(e). But apart from such instances, the Commission's finding as to the aggregate maximum allowances is conclusive.

It is of course the duty of the Commission not only to fix the maximum amount of the aggregate allowances for fees and expenses but also to determine in the first instance how much each claimant should receive. That is made evident not only by subsection (e)(12) but also by subsection (d) which requires the Commission in its approval of a plan to find that it meets the requirements of subsections (b) and (e). The latter, as has been noted, requires that the amounts to be paid by the debtor or the reorganized company for expenses and fees be "reasonable" as well as "within such maximum limits as are fixed by the Commission". Since the main services rendered in connection with a plan of reorganization under § 77 occur before the Commission, it is in a much better position than the District Court to determine the value, if any, of the services rendered by each claimant. That fact gives great weight to the findings made by the Commission on each claim. But the requirement in subsection (e)(2) that the judge find that the awards are "reasonable" negatives the idea that the findings of the Commission are conclusive. Hence within the maximum limits of the total allowances for fees and expenses the judge can make readjustments—increasing or decreasing amounts awarded to the various claimants or granting allowances where none were made by the Commission. The contrary view was adopted in *In re Chicago, M., St. P. & P. R. Co.*, *supra*,

pp. 374-375. The court felt that since subsection (e)(12) spoke of the "maximum limits" and "maximum allowances" fixed by the Commission, the findings of the Commission as to the maximum amount which each claimant could receive were conclusive. But that interpretation is difficult to reconcile with the requirement of subsection (e)(2) that the judge must find the allowances "reasonable". The use of the plural in subsection (e)(12) only indicates that the maximum allowance for fees and the maximum allowance for expenses are both to be fixed by the Commission.

My conclusion that the aggregate maximum allowances fixed by the Commission is not reviewable does not make § 77(e)(12) and (e)(2) unconstitutional. It is Congress which has the power under the Constitution to establish "uniform Laws on the subject of Bankruptcies throughout the United States". Article I, Sec. 8, Cl. 4. The scope of the bankruptcy power is not restricted to that which has been exercised. *Continental Bank* v. *Chicago, R. I. & P. Ry. Co.*, 294 U. S. 648, 670-671. The fact that Congress has customarily entrusted administration of the various bankruptcy acts to the courts does not mean that it must do so. As stated by Judge Evans in *In re Chicago, M., St. P. & P. R. Co.*, *supra*, p. 375, "the power of Congress to deal with bankruptcy carries with it the right to select the tribunal, even going outside of courts, to administer debtors' estates." When it comes to fees for services rendered or expenses incurred in connection with bankruptcy proceedings, Congress has plenary power. In § 48 of the general bankruptcy Act Congress has prescribed the schedule of fees for receivers, marshals, and trustees. It could provide that no fees for services rendered during the bankruptcy proceedings might be paid from the estate. The 1935 amendments to § 77 originally were recommended by the committees on that basis. H. Rep. No. 1283, *supra*, p. 3; S. Rep. No. 1336, *supra*, p. 4. Having that power Congress could fix fees for attorneys and others on a *per diem* or other basis. Cf. *Hines* v. *Lowrey*, 305 U. S. 85. In lieu of any such rigid system of control it could bring to its aid the services of the Commission and vest in it complete authority over all allowances. That clearly would not involve any question of delegation of judicial power. See *Sunshine Coal Co.* v. *Adkins*, 310 U. S. 381, 400. Hence, when Congress granted the Commission exclusive authority over the maximum amount of allowances, it did not give § 77 a constitutional infirmity.

Mr. Justice BLACK joins in this opinion.